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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

EVA O'BRIEN,

Plaintiff and Respondent,

v.

DENNIS E. BACA,

Defendant and Appellant.

A145949, A147555

**(Alameda County
Super. Ct. No. RG13681132)**

A jury determined Dennis E. Baca wrongfully terminated Eva O'Brien in violation of public policy, and that he acted with malice, oppression or fraud (Civ. Code, § 3294, subd. (a)).¹ It awarded O'Brien \$325,000 in compensatory damages and \$1 million in punitive damages. The trial court entered judgment for O'Brien and denied Baca's motions for judgment notwithstanding the verdict and new trial. In an amended judgment, the court awarded O'Brien costs.

Baca appealed from the judgment and the amended judgment. We consolidated the appeals. Among other things, Baca challenges the sufficiency of the evidence supporting the verdict and the damages. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Baca—a real estate developer—owns numerous income producing rental properties, including Airport Self Storage in Livermore (storage facility). The self-storage business has “very little overhead” and has been a “pretty good” investment for

¹ Undesignated statutory references are to the Civil Code.

Baca. In November 2010, O'Brien began working at the storage facility, and at Baca's business office. On October 9, 2011, O'Brien filed a claim with the Employment Development Department, stating her hours had been "cut . . . to less than part time." O'Brien's last day of work was October 21, 2011.

O'Brien filed a complaint against Baca. The operative first amended complaint alleged claims for: (1) sexual harassment; (2) pregnancy discrimination; (3) pregnancy based harassment; (4) retaliation; (5) failure to prevent discrimination and harassment; (6) failure to prevent retaliation; (7) wrongful termination in violation of public policy; (8) failure to pay overtime; and (9) failure to pay wages due at termination. O'Brien's wrongful termination cause of action alleged she was terminated "because of complaining about discrimination and harassment, filing a claim for unemployment insurance benefits and because of her upcoming pregnancy leave." O'Brien alleged she suffered "severe pain and emotional distress" and a "loss of earnings and/or other employment benefits and job opportunities" as a result of Baca's conduct, and that Baca acted with "malice, fraud and oppression and with conscious disregard for her rights and with the intent, design and purpose of injuring her." O'Brien sought compensatory and punitive damages.

Phase I: Liability

Baca is a "micromanager" and runs his business like a "very, very tight[]" ship.² Baca went to his office every day. While he was there, Baca ensured "everything was set the way he wanted it." He also checked the mail and the list of rent check deposits. Baca visited the storage facility once or twice a week, making sure that what was happening "was what was supposed to be happening." He also checked to see the rents were collected properly. Baca often swore at his employees and made disparaging remarks

² Baca and his longtime companion, Laura Read, testified at trial. Three storage facility employees also testified. We summarize the relevant facts in the light most favorable to the jury verdict, drawing all reasonable inferences in support of the jury's findings. (*Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1188 (*Wilson*).) We provide an overview of the facts here, and some additional facts in the discussion of Baca's specific claims.

toward them. Laura Read managed the storage facility, running “the day to day business and operations.” Baca, however, approved employee terminations.

A. O’Brien Begins Working for Baca

In November 2010, Read interviewed O’Brien for a position as “relief clerk” at the storage facility. At Read’s request, O’Brien met with Baca. O’Brien started work on November 22, shortly after her meeting with Baca. She worked 40 hours per week—three days a week at the storage facility and two days a week at Baca’s business office. O’Brien needed the job because it was “really hard to . . . survive with one paycheck.” She earned about \$1,500 per month, which helped pay her mortgage.

In May or June 2011, O’Brien learned she was pregnant; she later told Read about the pregnancy even though a colleague warned O’Brien that Baca “was not going to deal well with a pregnant woman.” On October 7, O’Brien met with Baca and Read at Baca’s office. Baca yelled at O’Brien and threw a storage facility rental contract at her. In a loud and angry voice, Baca told O’Brien: “ ‘all you can think about is your family, and you’re making so many mistakes. You don’t pay attention.’ ” Then he said, “ ‘you’re four, five months pregnant now? In a few weeks, with your belly, you’re not going to be able to do your work, and then you’re going to be breast feeding, and it’s going to cause even more problems.’ ”

Baca yelled at O’Brien for “a long time.” As Baca yelled, Read “didn’t do anything to help” O’Brien. Instead, she sat “there . . . smiling.” Then Baca got “really close” to O’Brien’s face and said, “ ‘Do you want to give notice?’ ” O’Brien responded, “ ‘No.’ ” After O’Brien told Baca she did not want “to give notice, he walked outside” the office. To O’Brien’s colleagues, Baca said: “ ‘I want you all to hear this. I am not firing [O’Brien].’ ” Then he told O’Brien in a loud voice: “ ‘Go back to work’ ” and “ ‘I’m going to take care of you.’ ” Baca did not fire O’Brien in part because he did not want her to collect unemployment.³ She was, however, “welcome to quit.”

³ Baca told Susan Reinke, then a storage facility employee, he was going to make O’Brien quit.

B. O'Brien's Hours Are Reduced, and She Is Fired

After the meeting, Baca determined what hours O'Brien would work, and he instructed another employee, Jason Hateley, to take O'Brien's storage facility keys. On her next day of work—October 10—O'Brien was prohibited from using the computer, answering the phone, or collecting rental checks. O'Brien was told "Baca wanted [her] to clean the toilets and windows, dusting, mopping, everything that had to be done in regards to cleaning the office." O'Brien had never been instructed to clean the office, and the request made her feel "like [she] was being punished." On October 14, O'Brien was sent home after only three hours of work; that day, she filed a claim with the EDD for a reduction in hours. O'Brien filed the claim because her "schedule was completely uncertain" and her "hours were cut." On O'Brien's next day of work—October 17—she was sent home around noon.

Read began the search to replace O'Brien after the October 7, 2011 meeting. O'Brien's replacement began working for Baca on October 19. O'Brien's next day of work was October 21. At approximately 11:00 a.m., however, Hateley told O'Brien that Baca wanted her " 'to go home.' " O'Brien called Read and asked her when she should come back to work. Read responded, " 'We see that you filed for unemployment. We no longer need your services.' " O'Brien received her final check that morning. The check was signed by Baca, and had the following notation written: "Today I called my employer at 11:50 a.m. and directed Ms. Read, my superior, I was faxing my time card for her to issue me my final paycheck." Baca had the notation written on the check because he was trying to create beneficial evidence if O'Brien sought unemployment benefits for being fired. O'Brien cashed the check even though she did not agree with the notation because she needed the money.

Just before noon on October 21, 2011, O'Brien texted her husband: " 'I just got fired.' " O'Brien's husband "called her right away, and her voice was shaky. She was crying." She told her husband, "they found out she had filed for unemployment, and they said, 'You're out of here.' " From October 7 to October 21, 2011, O'Brien worked approximately 26 hours.

C. O'Brien Suffers Emotional Distress

When O'Brien told her mother she " 'got fired,' " her mother assured her everything would " 'be okay.' " O'Brien, however, did not think everything would be okay. She felt "hopeless" and "scared." During a medical visit a few days after the termination, O'Brien said she was let go from her job and was having "stress" and "difficulty sleeping."

In the three months leading up to her son's birth in February 2012, O'Brien felt "absent" and "wanted to hide" in her room; she stopped showering regularly and wore her bathrobe all day. She seemed to have "no energy." O'Brien often had difficulty sleeping. If O'Brien saw a white truck similar to the one Baca drove, or if she closed her eyes, she pictured Baca's face, yelling. O'Brien hid in her room and required a substantial amount of help caring for the baby. She felt mentally "absent . . . somewhere else."

Dr. Brenda Chang began treating O'Brien in September 2012. O'Brien told Dr. Chang she was depressed—that she had been working in a "stressful . . . environment," that she had lost her job while she was pregnant, and that she and felt "lots of stress from [her] previous boss." Dr. Chang determined O'Brien was suffering from anxiety and chest pain, and diagnosed her with "[a]djustment disorder with depressed mood" caused solely by the loss of her job.⁴ Dr. Chang prescribed medicine for depression and anxiety. O'Brien began taking the medicine after she stopped breastfeeding her son; it made O'Brien feel better, but she still had "down days" when she pictured Baca's "angry face."

Phase II: Punitive Damages

The court's Standing Order provided in relevant part: "If the jury will be asked to consider punitive damages, the following additional orders apply: [¶] a. Defendant . . .

⁴ O'Brien did not have postpartum depression. O'Brien had no history of—and had never previously been treated for—depression or anxiety.

shall have all relevant financial data in Court in a sealed envelope once trial begins”⁵ Before Phase II, O’Brien served Baca with a notice to appear and produce financial documents, including balance sheets, income statements, statements of working capital, and financial statements reflecting his net worth and/or assets and liabilities (Code Civ. Proc., § 1987). Baca objected and indicated he would “not produce” the requested documents. Baca also claimed “[n]o such documents exist as no loans, credit lines, or other financing made . . . on behalf of Baca Properties” during the relevant time period.

As relevant here, Baca produced one document: a list of properties he owned and their 2014–2015 assessed value (property list). The total assessed value of the listed properties was \$57,747,806. At a hearing before Phase II, O’Brien’s counsel noted Baca’s failure to produce responsive documents, and Baca’s attorney responded: “[Baca] doesn’t have anything” and “the bulk of [Baca’s] net worth is tied up in his real property holdings.” The court admitted the property list into evidence during Phase II, and Baca testified he owned real property with a total assessed value of \$57.7 million dollars. Baca agreed with O’Brien’s counsel that he “build[s] for cash.” The majority of Baca’s rental properties have tenants.

Verdict, Post-Trial Motions, and Amended Judgment

The jury determined Baca wrongfully discharged O’Brien in violation of public policy, and that her filing of an unemployment claim was a substantial motivating reason for Baca’s decision to discharge her. The jury awarded O’Brien \$325,000 in compensatory damages, comprised of \$25,000 for economic loss/lost earnings and \$300,000 for emotional distress. At the conclusion of Phase II, the jury determined Baca acted with malice, oppression, or fraud, and awarded O’Brien \$1 million in punitive damages. The court entered judgment for O’Brien.

Baca moved for judgment notwithstanding the verdict, claiming insufficient evidence supported the jury’s findings that he discharged O’Brien and that he acted with

⁵ We grant O’Brien’s request for judicial notice of the trial court’s “ ‘Standing’ Pretrial Orders as to Cases Assigned Dates for Trial and ‘First Day’ Trial Orders” (Standing Order). (Cal. Rules of Court, rule 8.54; Evid. Code, §§ 452, 459.)

malice, oppression, or fraud. He also moved for a new trial, arguing: (1) insufficient evidence supported the verdict; (2) the damages were excessive; and (3) O'Brien's counsel committed misconduct during the Phase II. The court denied the motions, and noted "this case was presented by both sides certainly aggressively but professionally and with great ability."

In an amended judgment, the court awarded O'Brien costs as the prevailing party (Code Civ. Proc., § 1032).

DISCUSSION

I.

Substantial Evidence Supports the Verdict for Wrongful Termination in Violation of Public Policy

Baca contends the judgment must be reversed because there is "no evidence" he fired O'Brien, and no evidence she was terminated "because she had filed for unemployment benefits." "When a party contends insufficient evidence supports a jury verdict, we apply the substantial evidence standard of review." (*Wilson, supra*, 169 Cal.App.4th at p. 1188.) We "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor" (*Ibid.*) Our power "begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the [verdict]. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the [trier of fact].'" (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) "A party 'raising a claim of insufficiency of the evidence assumes a "daunting burden."'" (*Wilson*, at p. 1188, italics added.) Conflicts in the evidence do not justify " " "the reversal of a judgment, for it is the exclusive province of the [trier of fact] to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.'" " " (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.)

“The elements of a claim for wrongful discharge in violation of public policy are (1) an employer-employee relationship, (2) the employer terminated the plaintiff’s employment, (3) the termination was substantially motivated by a violation of public policy, and (4) the discharge caused the plaintiff harm.” (*Yau v. Allen* (2014) 229 Cal.App.4th 144, 154 (*Yau*); *Haney v. Aramark Uniform Services, Inc.* (2004) 121 Cal.App.4th 623, 641.) Firing an employee for filing an unemployment claim violates public policy. (*Hall v. Great Western Bank* (1991) 231 Cal.App.3d 713, 721.)

We reject Baca’s claim that there is insufficient evidence he fired O’Brien, and his related argument that the filing of the unemployment claim “was a not a substantial motivating factor in her alleged discharge.” By October 7, 2011, Baca, an exacting micromanager, was angry at O’Brien: he screamed at O’Brien, and threw a contract at her. When she refused to quit her job, Baca made O’Brien’s working conditions unpleasant—he reduced her hours, took away her keys, prohibited her from using the computer or answering the phone, and required her to clean the toilet—but he stopped short of firing her. That changed when O’Brien filed a claim for unemployment benefits on October 14.

Within days of the filing of the unemployment claim, Read hired O’Brien’s replacement. On October 21, Read told O’Brien: “ ‘We see that you filed for unemployment. We no longer need your services.’ ” Read testified she would not fire an employee without Baca’s approval. Shortly after her conversation with Read, O’Brien texted her husband: “ ‘I just got fired.’ ” In a telephone conversation, O’Brien told her husband “they found out that she had filed for unemployment, and they said, ‘You’re out of here.’ ” O’Brien also told her doctor that she “lost her job.” Baca signed O’Brien’s final paycheck, and admitted he had a notation written on the check to try to create the appearance that O’Brien quit her job.

Together, this evidence is more than sufficient to establish Baca directed O’Brien’s firing after she filed a claim for unemployment benefits—i.e. that the substantial motivating reason for O’Brien’s discharge was her filing of the unemployment benefits claim. (See *Yau, supra*, 229 Cal.App.4th at p. 159 [nexus

between firing and protected activity]; *Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1357–1358 [nexus between the plaintiff’s protected activity and the adverse treatment by employer].) Whether Baca terminated O’Brien’s employment, and for what reason, were disputed facts for the jury to decide, and Baca’s “version of what occurred was clearly less credible than that of [O’Brien].” (*Mike Davidov v. Issod* (2000) 78 Cal.App.4th 597, 605.) Baca’s one-sided view of the evidence does not demonstrate a lack of evidence supporting the jury’s conclusion.

II.

Substantial Evidence Supports the Emotional Distress Damages, and the Damages Are Not Excessive

Baca challenges the award of emotional distress damages, contending O’Brien’s “discharge did not cause” her damages, and that the amount of damages is “grossly excessive.” “Determinations concerning emotional distress—its existence and the appropriate compensation for it—are left to the finder of fact, often a jury, based on an entire evidentiary record, including the reasonable inferences which can be drawn from it, although a jury may properly rely on the testimony of one person to reach its conclusion.” (*Tan Jay Internat., Ltd. v. Canadian Indemnity Co.* (1988) 198 Cal.App.3d 695, 708 (*Tan Jay*).) “ “[T]here is no fixed or absolute standard by which to compute the monetary value of emotional distress.” ’ [Citation.] ‘[T]he jury is entrusted with vast discretion in determining the amount of damages to be awarded’ ” (*Hope v. California Youth Authority* (2005) 134 Cal.App.4th 577, 595.) A damages award will be reversed only where it “is so grossly disproportionate to the injury that the award may be presumed to have been the result of passion or prejudice.” (*Fortman v. Hemco, Inc.* (1989) 211 Cal.App.3d 241, 259.)

Baca’s suggestion that O’Brien did not prove emotional distress is specious. (*Tan Jay, supra*, 198 Cal.App.3d at p. 708.) As Baca acknowledges, O’Brien testified she felt stress, depression, and anxiety caused by Baca’s conduct, and O’Brien’s husband and treating physician corroborated O’Brien’s testimony. The jury observed the witnesses and their demeanor, and evaluated their credibility and motivation for their conduct. The

jury was in the best position to evaluate whether O'Brien suffered emotional distress and whether it was caused by Baca's wrongful conduct. Baca's disagreement with the verdict does not demonstrate the verdict is unsupported by substantial evidence.

Nor has Baca established the emotional distress damages are excessive. “ ‘The amount of damages is a fact question, . . . committed to the discretion of the jury They see and hear the witnesses and frequently, as in this case, see the injury and the impairment that has resulted therefrom. . . . An appellate court can interfere on the ground that the judgment is excessive only on the ground that the verdict is so large that, at first blush, it shocks the conscience and suggests passion, prejudice or corruption on the part of the jury.’ ” (*Iwekaogwu v. City of Los Angeles* (1999) 75 Cal.App.4th 803, 820, 821 [award of \$450,000 in emotional distress was not excessive]; *Saret-Cook v. Gilbert, Kelly, Crowley & Jennett* (1999) 74 Cal.App.4th 1211, 1230–1231 [award of emotional distress damages were not grossly disproportionate to the plaintiff's injury].) As discussed *post*, we are not persuaded by Baca's claim that the damages award was a reaction to the “improper vilification” by counsel for O'Brien.

Finally, we reject Baca's claim—unsupported by citation to relevant authority—that Dr. Chang's diagnosis was somehow inaccurate because she “was not a mental health professional.”

III.

Baca's Challenge to the Punitive Damages Award Fails

Baca argues the punitive damages award must be reversed because: (1) O'Brien failed to establish malice by clear and convincing evidence; (2) there is a disparity between the harm O'Brien suffered and the damages awarded; (3) there is insufficient evidence of his financial condition; and (4) O'Brien failed to request CACI No. 3944, on vicarious liability.

Punitive damages may be awarded where there is clear and convincing evidence the defendant acted with oppression, fraud, or malice. (§ 3294, subd. (a).) A punitive damages award “hinges on three factors: [1] the reprehensibility of the defendant's conduct; [2] the reasonableness of the relationship between the award and the plaintiff's

harm; and [3] in view of the defendant's financial condition, the amount necessary to punish him and discourage future wrongful conduct.” (*Kelly v. Haag* (2006) 145 Cal.App.4th 910, 914.) In the trial court, the plaintiff bears the burden of proof on a claim for punitive damages by clear and convincing evidence. (*Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 679–680 (*Baxter*).) On appeal, “the jury award of punitive damages must be upheld if it is supported by substantial evidence. [Citations.] As in other cases involving the issue of substantial evidence, we are bound to ‘consider the evidence in the light *most favorable to the prevailing party*, giving [her] the benefit of *every reasonable inference*, and *resolving conflicts* in support of the judgment.’ ” (*Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 891.)

A. Substantial Evidence Supports the Punitive Damages Award

Baca contends the evidence does not establish “malice by clear and convincing evidence.” “ ‘Malice’ means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.” (§ 3294, subd. (c)(1).) “Under the statute, ‘malice does not require actual intent to harm. [Citation.] Conscious disregard for the safety of another may be sufficient where the defendant is aware of the probable dangerous consequences of his or her conduct and he or she willfully fails to avoid such consequences. [Citation.] Malice may be proved either expressly through direct evidence or by implication through indirect evidence from which the jury draws inferences.’ ” (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1299.)

Baca contends his conduct was not “sufficiently reprehensible to warrant imposition of punitive damages.” He is wrong. “The adjective ‘despicable’ used in section 3294 refers to ‘circumstances that are “base,” “vile,” or “contemptible.” ’ ” (*Cloud v. Casey* (1999) 76 Cal.App.4th 895, 912 (*Casey*).) *Casey* is instructive. There, defendant corporations intentionally discriminated against the plaintiff because of her gender by not hiring her for a position as controller. (*Id.* at p. 911.) “Although the corporations presented evidence that the decision not to appoint Ms. Cloud as controller

was based on her lack of operational experience, the jury also heard evidence that the operational experience criterion was developed after [a man] was selected for the position. From this the jury could conclude that operational experience was not a real requirement for the position, but a pretext utilized by the corporations to explain away its gender-based decision.” (*Id.* at pp. 911–912.) The jury awarded the plaintiff punitive damages, but the trial court granted judgment notwithstanding the verdict. (*Id.* at p. 911.)

The appellate court reversed, concluding “the evidence of discriminatory intent and pretext which supported the finding of liability also provided a sufficient basis for the jury to find malice or oppression.” (*Casey, supra*, 76 Cal.App.4th at p. 911.) The *Casey* court explained, “[t]he jury could properly conclude that the corporations intentionally discriminated by denying Ms. Cloud a promotion based on gender, then attempted to hide the illegal reason for their decision with a false explanation, and that in this, they acted in a manner that was base, contemptible or vile. The discriminatory employment decision denied Ms. Cloud her protected right under FEHA Evidence that the decisionmaker attempted to hide the improper basis with a false explanation also supports the jury’s determination that the conduct was willful and in conscious disregard of Ms. Cloud’s rights.” (*Id.* at p. 912.)

Here as in *Casey*, the evidence supporting a finding of liability provided a sufficient basis for the jury to find malice. (*Casey, supra*, 76 Cal.App.4th at p. 911.) The jury could properly conclude Baca directed O’Brien’s firing to punish her for filing an unemployment benefits claim, “then attempted to hide the illegal reason” for the firing “and that in this, [he] acted in a manner that was base, contemptible or vile.” (*Id.* at p. 912.) Additionally, “[e]vidence that [Baca] attempted to hide the improper basis with a false explanation also supports the jury’s determination that the conduct was willful and in conscious disregard of [O’Brien’s] rights.” (*Ibid.*) Baca’s attempt to distinguish *Casey* is not persuasive. We conclude the evidence—when viewed in the light most favorable to the verdict—is sufficient to support the jury’s finding that Baca acted with malice (§ 3294, subd. (c)(1)).

Baca also argues there is a disparity between the harm O'Brien suffered and his degree of reprehensibility. To determine "the degree of reprehensibility of the defendant's misconduct," courts "consider whether '[1] the harm caused was physical as opposed to economic; [2] the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; [3] the target of the conduct had financial vulnerability; [4] the conduct involved repeated actions or was an isolated incident; and [5] the harm was the result of intentional malice, trickery, or deceit, or mere accident.' "

(*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 712–713 (*Roby*); *State Farm Mut. Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408, 419.) Here, the evidence established O'Brien suffered physical and economic harm as a result of Baca's conduct. O'Brien was also financially vulnerable—she earned \$15 per hour and depended on her job to pay her mortgage, making her more vulnerable to Baca's wrongful conduct. Baca directed O'Brien's firing to punish her for filing an unemployment claim, and then tried to cover up the illegal reason, which suggested intentional deceit, not mere accident. Together, this evidence demonstrates a sufficient degree of reprehensibility to warrant punitive damages.⁶

B. O'Brien Adequately Established Baca's Financial Condition

⁶ We reject Baca's suggestion that the punitive damages were not proportional to the compensatory damages. A punitive-compensatory ratio of approximately four to one satisfies due process. (See *Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1182 [approving decisions involving ratios of three or four to one]; *Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, 567 [constitutional limit may approach a ratio of four to one].) Here, the punitive-compensatory ratio is approximately 3 to 1. The punitive damages bear a reasonable relationship to the compensatory damages and are not excessive.

Baca's reliance on *Roby* does not alter our conclusion. In *Roby*, the California Supreme Court determined a "one-to-one ratio between compensatory and punitive damages [was] the federal constitutional limit" based "on the specific facts of this case," including the employer's "relatively low degree of reprehensibility . . . and the substantial compensatory damages verdict," which totaled \$1,905,000. (*Roby, supra*, 47 Cal.4th at pp. 719, 718.) *Roby* does not invalidate the punitive damages award here, where the total compensatory damages were \$325,000.

Baca complains the punitive damages award must be reversed because there is insufficient evidence of his financial condition. We are not persuaded. (*StreetScenes v. ITC Entertainment Group, Inc.* (2002) 103 Cal.App.4th 233, 243 (*StreetScenes*)). The property list—which was admitted into evidence during Phase II—demonstrated Baca owned income-generating real property assessed at over \$57 million dollars. Baca denied possessing documents relating to loans or financing, and he agreed with O’Brien’s counsel that he “build[s] for cash.” This created an inference Baca had no debt. From this evidence, the jury could easily infer Baca’s “actual wealth” and his “‘ability to pay the damage award.’ ” (*Baxter, supra*, 150 Cal.App.4th at p. 680.)

This case is not—as Baca argues—like *Baxter*, where the appellate court reversed a punitive damages award for insufficient evidence. (*Baxter, supra*, 150 Cal.App.4th at p. 681.) There, the plaintiff offered evidence the defendant was employed and owned several pieces of real estate, but no evidence of the extent to which the properties may have been encumbered, whether the properties were profitable, or whether the defendant’s income exceeded her indebtedness. (*Ibid.*) The *Baxter* court determined the record was “silent” regarding the defendant’s liabilities, and therefore insufficient to evaluate the defendant’s ability to pay the punitive damages. (*Ibid.*) Here and in contrast to *Baxter*, the evidence suggested Baca’s properties were not encumbered, that they were profitable, and that Baca had no liabilities. Unlike *Baxter*, the record was sufficient for the jury to assess Baca’s financial condition. (See *Green v. Laibco, LLC* (2011) 192 Cal.App.4th 441, 453.)

Baca contends “the jury could get no sense of [his] actual wealth” because O’Brien offered no evidence of his liabilities. We reject this claim for two reasons. First, as discussed above, there was meaningful evidence of Baca’s financial condition—his extraordinary wealth and lack of indebtedness. Second, Baca “is in no position to complain” about the supposed lack of evidence of his alleged liabilities. (*StreetScenes, supra*, 103 Cal.App.4th at p. 243.) The court’s Standing Order required Baca to bring “all relevant financial data in Court in a sealed envelope.” (Standing Order at p. 6.) When O’Brien requested evidence of Baca’s financial condition, Baca objected and

refused to produce documents, or claimed such documents did not exist. Baca's attorney stated the property list was the *only* responsive document. If there was little evidence from which the jury could form a more holistic view of Baca's financial condition, it was a situation of Baca's own making. (See *Caira v. Offner* (2005) 126 Cal.App.4th 12, 41 [assumed insufficiency of financial condition attributable to the defendant's failure to comply with court order to produce a current financial statement]; *County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533, 547 [trier of fact has "wide latitude" to make unfavorable inferences where a defendant intentionally withholds information concerning its assets and gives "evasive and nonresponsive" answers to questions about financial condition].)

In his reply brief, Baca cites *Soto v. BorgWarner Morse TEC Inc.* (2015) 239 Cal.App.4th 165, but that case does not assist him. There, the court held the "somewhat muddled" testimony of the plaintiff's expert regarding the defendant's revenue was insufficient evidence of the defendant's financial condition. (*Id.* at p. 195.) Here, the testimony was not muddled; it presented a clear picture of Baca's wealth and his ability to pay the punitive damages award. We conclude there was sufficient evidence of Baca's financial condition. (*StreetScenes, supra*, 103 Cal.App.4th at p. 244; *Green v. Laibco, LLC, supra*, 192 Cal.App.4th at p. 453 [evidence of the defendant's annual profit and positive net worth was sufficient evidence of financial condition].)

C. CACI No. 3944 Was Not Required

Baca argues the punitive damages award must be vacated because O'Brien failed to request CACI No. 3944, which concerns vicarious liability for punitive damages. That "instruction is intended for use when the plaintiff is seeking to hold only an employer or principal liable for punitive damages based on the conduct of a specific employee or agent." (CACI No. 3944 (2015 ed.) p. 782.) Here, O'Brien was not seeking to hold Baca liable for Read's conduct—O'Brien sought punitive damages against Baca for *his* conduct, not for Read's conduct. The court properly instructed the jury with CACI Nos. 3941 and 3942. CACI No. 3944 was not required and the trio of cases cited in Baca's opening brief does not demonstrate otherwise.

IV.

O'Brien's Counsel Did Not Commit Misconduct, and Any Assumed Misconduct Was Not Prejudicial

Baca contends the judgment must be reversed because O'Brien's counsel "vilified" him and, in doing so, "inflamed the passions and prejudices of the jury."

A. Background

During Phase II, counsel for O'Brien stated Baca lied about O'Brien's termination and came "into this court, to get an orchestrated effort to get all of [his] employees to say something different, that is truly reprehensible." O'Brien's counsel urged the jury to consider whether Baca "acted with trickery or deceit, well, what could be more deceitful than what he did in this court? Coming in here, lining up all of his soldiers—Ms. Read, Mr. Hateley." Baca's counsel objected, stating: "This is improper argument." Counsel "request[ed] an admonition." The court responded, "Yeah. Let's not talk about conspiracies and things of this nature. Let's . . . get into the deterrence aspects." In rebuttal closing, O'Brien's attorney asked whether Baca acted "with trickery or deceit? Yeah. I mean, when you go about creating a pattern and practice." Defense counsel objected to the "improper argument" and asked for an admonition. In response, the court directed O'Brien's counsel to "move on."

B. No Attorney Misconduct, and Any Assumed Misconduct Was Not Prejudicial

We are not persuaded by Baca's claim that O'Brien's counsel committed misconduct. "In conducting closing argument, attorneys for both sides have wide latitude to discuss the case. " " " "The right of counsel to discuss the merits of a case, both as to the law and facts, is very wide, and he has the right to state fully his views as to what the evidence shows, and as to the conclusions to be fairly drawn therefrom. The adverse party cannot complain if the reasoning be faulty and the deductions illogical, as such matters are ultimately for the consideration of the jury." " " [Citations.] "Counsel may vigorously argue his case and is not limited to 'Chesterfieldian politeness.'" " [Citations.] "An attorney is permitted to argue all reasonable inferences from the evidence" " " (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 795–796 (*Cassim*)). O'Brien's counsel did not commit misconduct during closing argument in Phase II.⁷ Counsel was within the "wide latitude" afforded to him to argue reasonable inferences from the evidence.

⁷ Baca lists other instances of purported misconduct and claims O'Brien's counsel asked defense witnesses inappropriate and demeaning questions in an attempt to vilify him. According to Baca, O'Brien's counsel "attacked the character of Mr. Baca and each of his witnesses, portraying them as conspiratorial liars. Objections were made, admonitions were requested, but no admonition was given." Not so. We have reviewed each instance of claimed misconduct by O'Brien's counsel. Baca objected to the form of certain questions asked by O'Brien's counsel as argumentative, but did not object to the alleged misconduct and request an admonition. As to these questions, Baca's misconduct claim is forfeited. (*Janice H. v. 696 North Robertson, LLC* (2016) 1 Cal.App.5th 586, 604 [rejecting claim premised on counsel's "inflammatory rhetoric and statements unsupported by evidence" where the defendant failed to object to all but one statement].)

Baca's claim that O'Brien's counsel committed misconduct during Phase II closing argument by referring to Baca as "defiant" and "unapologetic" is forfeited for the same reason. We decline to consider Baca's recitation of additional instances of purported attorney misconduct, raised for the first time in his reply brief. (*Schubert v. Reynolds* (2002) 95 Cal.App.4th 100, 108 [appellate court need not address a point not raised in the opening brief]; *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764 [" " "[o]bvious considerations of fairness in argument demand that the appellant present all of his points in the opening brief" " "].)

Moreover, any assumed attorney misconduct was not prejudicial. “Prejudice exists if it is reasonably probable that the jury would have arrived at a verdict more favorable to the moving party in the absence of the irregularity or error.” (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1249.) The court instructed the jury that what the attorneys say during trial—including closing argument—was not evidence. (CACI Nos. 101, 106 (2015 ed.) pp. 11, 18.) Additionally, the court instructed the jury not to let “bias, sympathy, prejudice or public opinion influence your verdict.” (CACI No. 100 (2015 ed.) p. 7. “Absent some contrary indication in the record, we presume the jury follows its instructions [citations] ‘and that its verdict reflects the legal limitations those instructions imposed.’ ” (*Cassim, supra*, 33 Cal.4th at pp. 803–804; *Pope*, at p. 1250.) Having examined the “entire case, including the evidence adduced, the instructions delivered to the jury, and the entirety of [the punitive damages closing] argument,” we conclude any assumed attorney misconduct “was harmless.” (*Cassim*, at p. 802.)⁸

DISPOSITION

The judgment and the amended judgment awarding O’Brien costs are affirmed. O’Brien is entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

⁸ In an amended judgment, the court awarded O’Brien costs as the prevailing party (Code. Civ. Proc., § 1032). Baca contends the amended judgment “should be reversed for the same reasons as the original judgment.” We have rejected Baca’s challenge to the original judgment and we therefore decline to reverse the amended judgment.

Jones, P. J.

We concur:

Simons, J.

Bruiniers, J.